law mortgages,[15] the result is undoubtedly correct. As has been seen the mortgage is still enforceable,[16] and no difference in result should follow from the fact that the parties are reversed. It is true, though, that the same doctrine has been applied to mortgage liens,[17] and even to the grantor's implied lien.[18] The contrary authority must be regarded as the better view.[19] Equity had never refused to clear a title acquired by adverse possession, even as against the former owner.[20] The situation is entirely different from that in the common-law mortgage cases; the plaintiff has a title which no one can dispute and is merely asking to have the *status quo* declared. Not to do so is of no benefit to the defendant, while it embarrasses the plaintiff and makes the land inalienable. With her rational conception of mortgages California takes this view. In two cases [21] the court has cleared the title of a purchaser from the debtor, distinguishing a prior case,[22] on the ground that there the conveyance was made before the statute had run. Since in none of the cases was the purchaser under a personal obligation, and in all knew that the land had been charged with the lien, the distinction shows a desire to avoid the former unfortunate decision. These cases should be followed and a similar result reached in a situation like that in the principal case.

TAXABILITY OF CAPITAL INCREMENT AS INCOME. — If property, held as an investment, is sold at a profit, may the profit constitutionally be taxed by the federal government as income? The answer, given by a unanimous court, is in the affirmative.[1] The legislative definition of income expressly included such profit; such definition was not unreason-

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[15] De Walsh *v.* Braman, 160 Ill. 415, 43 N. E. 597 (1896); Jenkins *v.* Andover Theological Seminary, 205 Mass. 376, 91 N. E. 552 (1910).

[16] See note 4, *supra*.

[17] Sturdivant *v.* McCorley, 83 Ark. 278, 103 S. W. 732 (1907); Barney *v.* Chamberlain, 85 Neb. 785, 124 N. W. 482 (1910); Keller *v.* Souther, 26 N. D. 358, 144 N. W. 671 (1913). See 1 POMEROY, EQUITY JURISPRUDENCE, 4 ed., §§ 386, 393.

[18] Cassell *v.* Lowry, 164 Ind. 1, 72 N. E. 640 (1904).

[19] Kingman *v.* Sinclair, 80 Mich. 427, 45 N. W. 187 (1890); Cushing *v.* Spokane, 45 Wash. 193, 87 Pac. 1121 (1906) (tax lien); Boyd *v.* Buchanan, 176 Mo. App. 56, 162 S. W. 1075 (1914) (*semble*).

In those states where a mortgage lien is enforceable after the debt is barred it will follow that equity will not clear the title just as it will not where the title theory of mortgages is held. Any objection to the refusal to clear the cloud on title in those states must then be based on objections to the doctrine that the mortgage is enforceable after the debt is barred.

[20] Alexander *v.* Pendleton, 3 Curt. (U. S.) 221 (1814); Arrington *v.* Liscom, 34 Cal. 365 (1868).

[21] Faxon *v.* All Persons, 166 Cal. 707, 137 Pac. 919 (1913); Muhs *v.* Hibernia Savings & Loan Society, 166 Cal. 760, 138 Pac. 352 (1914).

[22] Burns *v.* Hiatt, 149 Cal. 617, 87 Pac. 196 (1906).

[1] Merchants' Loan and Trust Co. *v.* Smietanka, U. S. Sup. Ct., October Term, 1920, No. 608. In this case trustees held stock the value of which on March 1, 1913, was $561,798 and which they sold in 1917 for $1,280,996. The federal income tax was assessed on the difference between these two sums as income for the year 1917. The trustees claimed that this profit on sale was not "income" within the meaning of that term as used in the Sixteenth Amendment to the Constitution. The court held that the tax was properly assessed.

able or out of joint with popular conceptions, and therefore it should have been supported by the court. The court, however, did not reach its result by this reasoning. Its thought would seem to be that it was the province of the court to define the term "income" according to what it believed to be the popular conception of the term at the time of the adoption of the Sixteenth Amendment. In *Hays* v. *Gauley Mountain Coal Company*,[2] the court had, in dealing with the Corporation Excise Tax Act of 1909, construed the term "income" to include capital increment realized by a sale. In that case the only question presented was as to the legislative intent; in the principal case the question presented was as to legislative competence, but the court saw no reason for adopting a different construction of the term. It therefore declined to follow the *dicta* in *Gray* v. *Darlington*,[3] and *Lynch* v. *Turrish*,[4] and adopted the definition presented in a *dictum* in *Eisner* v. *Macomber*,[5] to wit: "Income may be defined as a gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through sale or conversion of capital assets." It is to be noted that this definition does not include any capital increment except such as is realized by a sale or conversion.

In *Goodrich* v. *Edwards*,[6] decided at the same time, the court held that if property acquired before March 1, 1913, were sold for a price greater than the market value on March 1, 1913, but less than the cost, there was no taxable gain. It reached this conclusion by construction of the statute.

RECENT CASES

AMBASSADORS AND CONSULS — RIGHT OF FOREIGN EMBASSIES TO BE REPRESENTED IN OUR COURTS BY *AMICI CURIAE*. — The libelant brought a suit *in rem* against the *Gleneden*, a steamship leased as a British Admiralty transport. Counsel for the British Embassy intervened as *amici curiae* and raised objection to the jurisdiction of the court, claiming that the vessel was owned by the British government. The suggestion of the *amici curiae* was overruled on the ground that the vessel was privately owned. The master of the *Gleneden* applied for a writ of prohibition to prevent the court from proceeding with the suit. *Held*, that the petition be dismissed. *In re Muir, Master of the Gleneden*, U. S. Sup. Ct., October Term, 1920, No. 18, Original.

One ground of the decision was that the suggestion of the *amici curiae* was improperly received.

A suit *in rem* was brought against the *Pesaro*. The Italian Ambassador submitted a suggestion that the ship was owned by the Italian government and was not subject to the jurisdiction of the court. This suggestion was accompanied by a certificate of the Secretary of State that the Ambassador was the duly accredited diplomatic representative of Italy. The libelants objected.

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[2] 247 U. S. 189 (1918).
[3] 15 Wall. (U. S.) 63 (1872).
[4] 247 U. S. 221 (1918).
[5] 252 U. S. 189, 207 (1920).
[6] U. S. Sup. Ct., October Term, 1920, No. 663.